



THE ATTORNEY GENERAL OF TEXAS

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December 5, 1968

Honorable Jerry Sadler
Commissioner
General Land Office
Austin, Texas 78701

Opinion No. M-311

**Re: Whether Commissioner of
General Land Office or
Veterans' Land Board may
reinstate forfeited pur-
chase contract.**

Dear Mr. Sadler:

**In your recent request for opinion, you present the
following fact situation and questions in regard to the
operation of the Veterans' Land Board and its affairs.**

**"It has been the general consensus of opinion
in the past years, and it is currently the
opinion of this office, that the administration
of the Veterans Land Program is primarily the
duty of the General Land Office and its employees.**

. . . .

**"The Board held a forfeited land sale on
November 19, 1968, at 11:00 A.M. here in the
General Land Office following the provisions of
Article 5421m. Just prior to the sale, but sub-
sequent to the time that the Board met and ordered
tracts to be advertised for resale, one of the
original veteran purchasers, whose tract was forfeited
in accordance with Article 5421m, and whose tract was
ordered advertised for resale in accordance with
Article 5421m, asked the Commissioner of the General
Land Office to accept payment in full of the original
contract and to furnish him with a paid-in-full deed.**

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The Commissioner of the General Land Office refused to accept payment in full; however, the Veterans Land Board, having some question in their mind, would like for your office to inform us of the legal rights of the Commissioner to reinstate the contract referred to above. If you conclude that the contract of sale cannot be reinstated after it has been forfeited and ordered advertised for resale, can the original veteran tender the full payment due under the contract and receive a paid-in-full deed after he has lost all rights to reinstate his contract?" (Emphasis supplied to question.)

Article III, Section 49b of the Texas Constitution provides in part as follows:

"The Commissioner of the General Land Office shall act as Chairman of the Board and shall be the administrator of the Veterans' Land Program under such terms and restrictions as are now or may hereafter be provided by law."

Section 2 of Article 542lm, Vernon's Civil Statutes, provides in part that:

"The Commissioner of the General Land Office shall be Chairman of the Board and Administrator of the Veterans' Land Program . . . and shall perform all duties and functions of the Board prescribed by law, except those prescribed in section 2(A) hereof, which shall be performed by the Veterans' Land Board as constituted." (Emphasis supplied)

Said Section 2(A), above referred to provides in part that:

"The duties of the Veterans' Land Board ... shall be ... to provide for the forfeiture of contracts of sale and purchase and the resale of forfeited land; and to formulate such policies, rules and regulations as may be necessary, not in conflict with the provisions of law, to insure the proper administration of the law and to carry out the intent and purposes thereof." (Emphasis supplied)

Section 19 of Article 542lm, provides in part that:

"In any case where the sale has been forfeited and title to the land revested in the Veterans' Land

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Fund, the original purchaser or his vendee shall have the right to reinstate the purchase contract at any time prior to the date on which the Board shall have met and ordered the said lands to be advertised for resale, or for lease for mineral development but not thereafter."

In answer to your question as presented, it is the opinion of this office that the Commissioner of the General Land Office, as Administrator of the Veterans' Land Program, is without authority to reinstate a purchase contract after it has been forfeited and ordered advertised for resale; and further, that once the contract has been forfeited and the land ordered advertised for resale, the original veteran may not, in the absence of further action on the part of the Veterans' Land Board as hereinafter set out, tender the full payment due under the contract and "receive a paid-in-full deed," for to so allow would require a prior reinstating of the contract, which is prohibited.

It must be pointed out, however, that the above answers are directed, and limited, to the Commissioner of the General Land Office as statutory administrator of the Veteran's Land Program and are predicated upon the premise that the contract has been forfeited with no subsequent action by the Veterans' Land Board as hereinafter described. Forfeiture provisions in statutes are strictly construed, not favored, and will be interpreted where possible to prevent, rather than cause, a forfeiture. 25 Tex. Jur.2d 511, Forfeitures, Sec. 10; also p. 502, Sec. 3, declaring forfeitures to be a harsh remedy disfavored both at law and in equity.

There appears to be no reason why the forfeiture provisions of a contract between the Veterans' Land Board and a veteran purchaser would not be subject to the same rules in regard to their enforcement, waiver and setting aside as would a like contract between two individuals, as such rules are set out in the case of Stevenson v. Lohman, 218 S.W.2d 311, 314 (Tex. Civ.App. 1949, error ref.) to wit:

"We agree with appellant that the courts do not favor forfeiture and when proper equities are shown to exist equity will intervene and will deny unjust enforcement of the naked legal right to a forfeiture. On the other hand, when parties enter into a contract providing that either should forfeit his rights thereunder upon default in any of the material provisions, thereof, it then becomes the burden of the party resisting such forfeiture to plead and prove

such facts as would justify a court of equity in preventing his adversary from doing that which otherwise, under the law, he has a right to do, but in equity and good conscience he should not be permitted to do."

Section 19 of Article 542lm provides certain prerequisites to the declaring of a forfeiture by the Veterans' Land Board. Automatic forfeiture is not specified, but forfeiture operates at the discretion of the Board.

Section 21 of Article 542lm, provides in part that: "The Board is hereby made the sole judge of forfeiture of any contract under this Act, and anyone availing himself of the provisions of this Act shall by so doing agree to abide by the same ..." (Emphasis supplied) No specific time limit is placed upon the Board within which it can make such determination.

Section 17 of Article 542lm provides in part that "... in any individual case, the Board may, for good cause, postpone from time to time, upon such terms as the Board may deem proper, the payment of the whole or any part of any installment of the selling price or interest thereon." No specific time limitation is placed upon the Board within which it can make such decision to postpone such payment. When forfeitures are intended to take place automatically, the time should be definitely fixed. 25 Tex.Jur.2d 517, Sec. 17, Forfeitures.

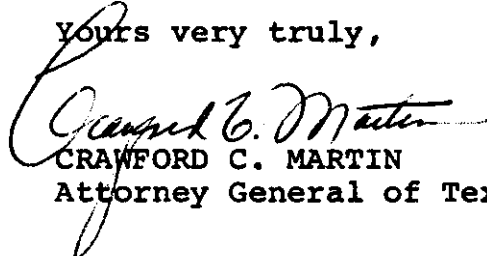
It would therefore appear that upon sufficient showing to the Board that in equity and good conscience the contract should not be finally forfeited, the Board, being the "sole judge of forfeiture", and not having lost administrative jurisdiction of the forfeiture action, may by majority vote determine that there has in fact been no forfeiture and annul its purported forfeiture, thus in effect reinstating the contract. It would further appear that for "good cause" the Board by majority vote may postpone the due date of the delinquent payments, thus rescinding the purported forfeiture and reinstating the contract. There being no specific limitation of time within which the Board may take either such action, and any subsequent bidder having agreed to "abide by the same", it is the opinion of this office that even though the Board has theretofore met and ordered said lands to be advertised for resale, either of such actions may be taken by the Board and the contract reinstated at any time, at least until the Board has accepted a subsequent bid for resale and the rights of third parties have vested.

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SUMMARY

The Commissioner of the General Land Office, as Administrator of the Veterans' Land Program, is without authority to accept delinquent payments and reinstate a purchase contract after the same has been forfeited and the Veterans Land Board shall have met and ordered the lands to be advertised for resale; but the Veterans' Land Board may do so at any time, at least until it has accepted the bid of a subsequent purchaser and the rights of third parties have vested.

Yours very truly,


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